

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.12816 of 2006

Dated: 15th September, 2006

Between :-

M/s.Pawani Builders

Rep.by its Managing Partner

Mr. P.Dayakar Reddy

Petitioner

..

And

Municipal Corporation of Hyderabad

Rep. by its Commissioner, Basheerbagh

Hyderabad and 2 others

..Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.12816 of 2006

ORDER:-

1. This Court ordered *notice before admission* on 24-6-2006 and granted interim direction not to demolish the subject matter of the Writ Petition for a period of six weeks and subsequent thereto, the same is being extended from time to time.
2. Heard the Counsel.
3. The Writ Petitioner – M/s.Pawani Builders filed the present Writ Petition praying for a Writ of Mandamus declaring the action of the respondents in proposing to demolish the building “Pawani Plaza” situated at 6-3-698/A, Panjagutta, Hyderabad, without giving proper notice to the petitioner as illegal, arbitrary and unreasonable and consequently direct the respondents not to undertake demolition of the building without proper notice to the petitioner and to pass such other suitable orders.
4. Several factual details had been narrated in the affidavit filed in support of the Writ Petition. Equally, a counter affidavit is filed on behalf of the respondents denying certain of the allegations and admitting certain of

the allegations. Further, a reply affidavit also is filed narrating several details.

5. It is stated that the petitioner owned an extent of 3135 sq.yds., of land forming part of Municipal Nos.6-3-698/A, Panjagutta, Hyderabad having purchased the same from different persons. It is also stated that an extent of 475 sq.yds., was surrendered for the purposes of road widening and net remaining built up area is 2660 sq.yds. It is further stated that petitioner applied for and obtained permission for construction of basement, ground and mezzanine floors and four upper floors and the total plinth area of building is 41766.90 sq.ft., and the additional sanctioned area for the 4th floor is 7321 sq.ft., and thus the total area is 49087.90 sq.ft. It is also stated that the petitioner had obtained permit No.64/6 in file No.65/TP5/CCP/90/96. The building that has been constructed on the said plot of land is in accordance with the permission granted by the Municipal Corporation of Hyderabad. It is also stated that the petitioner and others have sold the ground floor to third parties and in Basement floor – Hub Restaurant is carrying on its business and in Mezanani floor M/s.Cendura Software (P) Limited is running business and in the First Floor M/s.Promontra Synergy Solutions is running its business

and in Second floor M/s.Beacon Global Services (P) Limited is running its business and in the Third floor M/s.Chaitanya Infosystems is running its business and in the fourth floor M/s.AXM Communications is running its business peacefully. It is further stated that there are various tenants who are carrying on different businesses and most of the tenants of the petitioner and others are carrying on business of software companies and there is extensive network installed in all those premises and in the cellar generators and other equipments are located to a side. It is also stated that the petitioner was also involved in the construction of the building known as Venkat Plaza which is adjacent to Pawani Plaza and it is on the southern side of the building Pawani Plaza. It is further stated that the Municipal Corporation of Hyderabad has been undertaking the widening of the road connecting Panjagutta Circle to Rajiv Gandhi Circle and the width of the proposed road has been increased from time to time. From time to time the Central Median of the said road has also been shifted. It is further stated that the petitioner was all along under the impression that measured from the center of the road, the building Pawani Plaza was more than 75 ft. away from the and consequently the same would not be affected by the road widening. The petitioner has in fact never received any notice in respect

of the proposed road widening or the requirement of demolition of any part of the building Pawani Plaza. It is further stated that however as in the vicinity of the petitioner's building, certain other buildings were effected, the petitioner met the Commissioner or Municipal Corporation of Hyderabad and appraised him of the status of the builders. The petitioner was directed to submit appropriate representation to the Addl Commissioner – 2nd respondent and on 19-6-2006 the petitioner submitted a representation to the Additional Commissioner as also to the Commissioner of Municipal Corporation of Hyderabad. The petitioner pointed out that on 17-6-2006 the officials of the Municipal Corporation of Hyderabad had come over to demolish parts of Pawani Plaza and Venkat Plaza. The petitioner further stated that if front open space is demolished, the entire cellar would get inundated with water as it is rainy season and the expensive equipment kept therein would be damaged. The petitioner pointed out that the building is mostly occupied by software companies and their equipment would be damaged if the demolition is undertaken in a haphazard manner. The petitioner was willing to cooperate with the respondents and would have no objection for surrendering the appropriate portion for road

widening provided adequate time is given to undertake the demolition in systematic way, with a minimum damage to the structure of buildings. The petitioner had requested that sufficient time may be granted for construction of the retaining wall. It is also stated that while the matter stood thus, on the afternoon of the 23rd June 2006, the officials of Municipal Corporation of Hyderabad came over to demolish the compound wall of the adjacent building Venkat Plaza which is on the southern side of the building Pawani Plaza. The petitioner was orally informed that the building Pawani Plaza would have to be partially demolished with an extent of 12 ft. being affected on the southern side and nothing at all being affected on the northern side and in other words, the triangular piece with 12 ft base on the Southern side would have to be removed all along the front of the building. It is further stated that the petitioner has not been given any notice for the proposed demolition and no time has been granted to the petitioner to undertake the demolition in a systematic way without damaging the structure. It is also stated that the photographs taken on the evening of 23rd June 2006 which shows the demolition of the compound wall of Venkat Plaza which is on the southern side is filed here together with Compact Disc and the receipt for obtaining

the said photographs. It is also stated that there is a well founded apprehension that the respondents would demolish parts of the building Pawani Plaza without notice to the petitioner. It was also stated that such demolition would result in huge loss to the petitioner and the petitioner would be forced to pay compensation to the various occupants of the building for damage of their equipment in addition to the petitioner suffering damage to the building. It is further stated that the action of the respondents in not considering the representation of the petitioner submitted on 19-6-2006 but yet proceeding with demolition is arbitrary and unreasonable. It is stated that given reasonable time, the petitioner will cooperate with the respondents and undertake the demolition in a systematic way without causing any obstruction to the traffic and also causing least bit of damage to the structure and the equipment within the building. It is also stated that the estimate cost of reconstruction of the demolition of portion will be in the region of Rs.1 crore and the respondents are not even making any offer to assess the damage that the petitioner would suffer as a consequence of the demolition to be undertaken by them in a haphazard manner.

6. A counter affidavit is filed narrating several factual details. It is stated that the Government has approved the

Master Plan vide G.O.Ms.No.414 MA dt.27-9-75 for the twin cities of Hyderabad & Secunderabad and as per this approved Master Plan the existing road width 85'-0" from Panjagutta Junction to Somajiguda Junction is proposed to 150'-0" wide Inner Ring Road. M.C.H. has taken up the road widening work in a phased manner to achieve the ultimate road width of 150'-0". It is stated that in the year 1994 the petitioner has submitted the building plans in M.C.H. seeking permission for construction of cellar, ground, mezzanine, first, second & third floors for shops & show rooms with relaxations of all round setbacks in lieu of the land being surrendered for the proposed 150'-0" wide Inner Ring Road, since the petitioner has agreed to surrender the affected portion to a depth of 30'-0" throughout the frontage M.C.H. at free of cost, hence the M.C.H. has recommended the case to the Government to grant relaxations of all round setbacks and also for construction of Mezzanine floor to an extent of 5487 sft (60.6%) as against permissible 3014.98 Sft (33.3%). The Government considered the recommendations of the M.C.H., and granted the following relaxations under G.O.Ms.No.131 MA dt.6-10-1994

Front Open Space (East) : To the full extent of 26'-3" after

Leaving 30'-0" for widening

of road
Rear Open Space (West) : To an extent of 0'-0" to 8'-6" so as

to maintain an open space
of 17' to
10', 20' to 14' to 1'-6"
against the
required open space of 10'-0".

Aggregate side open space : To an extent of 0' to 30' to 27' so as

to maintain an aggregate
side open
space of 46'-6" to 15' to 18'
against
the required aggregate
open space to
45'-0".

Mezzanine floor area : To an extent of 27.30% (2472.02

Sft) so as to allow the area
of
60.60% (5487 Sft) against
the
permissible Mezzanine
floor area
of 33.3% (3014.98 Sft)

The relaxations granted are subject to the condition that the party should surrender the land affected in road widening at free of cost to respondent Corporation. Subsequently, the petitioner has approached the

Government with a representation dt.21-10-1994 that he is leaving 450.0 sq.yds., free of cost for Road Widening for public utility and request to allow to leave average space of 21'-0" and in his further representation dt.24-10-1994 has agreed to give 9'-0" land if the road is widened to 150'-0". The Government in G.O.Rt.No.1298 MA dt.24-11-94 have issued partial modification orders and permitted the petitioner to leave 21'-0" instead of 30'-0" for road widening subject to condition that the petitioner should surrender 9'-0" strip of land duly dismantling the structures therein and the petitioner should give undertaking to the respondent Corporation to this effect. Based on the above orders of the Government, the Corporation has granted permission in Permit No.469/70 dt.10-4-95 and after obtaining the sanction plan the petitioner has proceeded with the construction in deviation to the sanction plan and approached the Government with a representation for further relaxations to the permitted building, proposed construction of 5th floor and FSI to an extent of 1:1.75. The Government in G.O.Rt.No.644 MA dt.1-6-96 have granted further relaxations as under:-

FSI : To an extent of 1:0.25 so as to allow on FSI of 1:1.75

against the permissible FSI of 1:1.50

All round open spaces:

a) Front : To an extent of 4'-7" at Ground floor + 4

upper floors

and 30'-0" at 5th floor over and above the
already
relaxed set back against the required set
back of 30'-0".

b) Read : To an extent of 10'-0" to 20'-0" to 4'-10" over
and

above already relaxed setback, against the
required set
back of 30'-10".

c) Side (N) : To an extent of 0'-0" to 17'-04" to 19'-01" to
5'-10"

over and above already relaxed set setback
against the
required set back of 30'-10".

d) Side (E) : To an extent of 14'-4" to 14'-4" to 14'-10"
over and

above already relaxed set setback against
the required
set back of 30'-10".

The above relaxation accorded subject to the condition
that the petitioner should surrender the site affected in
road widening free of cost the respondent Corporation
and should not claim any compensation in future as the
cost of his land affected in road widening have been
adjusted to the penal amount payable and based on the
above orders of the Government again the respondent
Corporation has granted permission in permit No.64/6
dt.7-2-97. It is also stated that the respondent Corporation

and the Government have granted several relaxations to the petitioner in the proposed construction and in the existing building towards all round setbacks and permitted excess FSI to an extent of 1:0.25 and further in lieu of the affected portion the cost of the land value was adjusted in the penal amount. It is further stated that the above said relaxations were granted subject to surrendering the physical possession of the affected portion in the proposed 150'-0" inner Ring Road. It is stated that the petitioner in the representation dated 29-10-1994 submitted before the Government agreed to surrender the affected portion for 150'-0" wide road to a depth of 30'-0" through out the frontage and whereas the petitioner surrendered to a depth of 12'-4" only on south-east corner and 3'-0" on north-east corner and hence the petitioner is required to surrender 17'-8" depth on south-east corner and 27'-0" on north-east corner of the site, consisting of cellar & building to a depth of 11'-2" on south-east corner and 0'-0" on north-east corner up to a width of 57'-0". It is also stated that the owners of the side properties have already surrendered the physical possession of the affected portion to a depth of 30'-0" to 32'-6" and thus the petitioner's site has formed as a bottleneck. It is also further stated that the Government in G.O.Ms.No.664 MA dt.8-7-2005 has notified as Corridor Road from Tarnaka to

Hitech City via. Begumpet, Panjagutta and Jubilee Hills and the petitioner's site is abutting to this Corridor Road. It is also stated that the respondent Corporation has already undertaken the construction of Flyover at Somajiguda Junction. It is also stated that the respondent Corporation is taking up the Road Widening work on top priority and accordingly the respondent Corporation has already taken over most of the affected properties in the proposed 150'-0" wide Road and Corridor Road. It is further stated that the respondent Corporation had requested the petitioner to cooperate and handover the affected portion in the proposed 150'-0" wide Road and Corridor Road. It is also further stated that earlier at the time of obtaining building permissions from the respondent Corporation and relaxations of the Government, the petitioner has agreed to surrender affected portion at free of cost and whereas now the petitioner has approached this Court that the respondent Corporation is proposing to demolish the building without giving proper notice, which is a clear misrepresentation of facts before this Court and the question of issuing any notice again and again does not arise. It is further stated that the relaxations were granted by the Government and has agreed to surrender affected portion at free of cost towards all round setbacks and to

construct excess built up area, further adjusted the land value of the affected portion in the penal amount, since the petitioner has agreed to surrender the affection portion to respondent Corporation at free of cost. It is also further stated that no further notice from respondent Corporation is required to be given to the petitioner and the Road Widening work has been taken up by the respondent Corporation in the interest of the general public, the petitioner is required to hand over the physical possession of the affected structures in the proposed road widening for smooth flow of the traffic, to ease the traffic problem, to curb the traffic jams and to save the valuable human lives from accidents etc. It is also further stated that the petitioner is well aware of the widening of the existing 85'-0" wide road to proposed 150'-0" wide road and has to surrender the affected portion to a depth of 30'-0" as per his own representations dated 24-10-1994 submitted before the Government agreeing to surrender the same to respondent Corporation at free of cost. It is also further stated that the petitioner cannot take the plea now that the various tenants have occupied and carrying out different types of businesses and it would lead to huge loss etc., and the Road Widening work is in the interest of the general public and the either side of the owners of the affected properties have already surrendered the physical

possession and the road is formed and being used. It is also further stated that the petitioner is required to cooperate with the respondent Corporation and surrender the effected portion as agreed at the time of obtaining building permissions and relaxations from the Government. It is further averred in para 10 that the existing width of the road is taken into consideration and the center of the existing road is taken as a basis for achieving the affected portion to the proposed 150'-0" wide road, the width of the existing road is 80'-0" and the applicant is getting affected to a depth of 30'-0" therefore, the authenticity of the central median does not arise and the petitioner has agreed to surrender the effected portion at the time of obtaining building permissions and relaxations from the Government and the petitioner is not allowed to turn back and take any other pleas. It is also stated that the petitioner is also the owner of the southern side property called as Venkat Plaza bearing Pr.No.6-3-883/5, 698/4/A, 698/2/1, 697/6/1 and 698/4 which was also affected to a depth of 32'-0" through out the frontage and the affected portion of this property is already surrendered to respondent Corporation at free of cost and hence the road is formed and used and similarly the petitioner is required to surrender the affected portion of

these premises also in the same alignment. It is further stated that the petitioner had submitted a representation on 19-6-2006 to respondent Corporation stating that if the cellar and front open space is demolished the entire cellar, generator and electrical room and parking area gets inundated with rain water and occupied by the Software Companies and the damaged cost cannot be estimated and requested to mark the minimum space for Road Widening without effecting the building portion, balcony and the entrance and he has no objection to construct the retaining wall. It is also further stated that the petitioner's site is getting affected to a depth of 30'-0" and the same is marked at site in the presence of the petitioner and this effected portion is in the alignment of his own property on southern side. It is further stated that the affected portion of the petitioner's site is earmarked to a depth of 17'-8" on south-east corner and 27'-0" on north-east corner of the site and therefore the respondent Corporation has considered the representation of the petitioner dt.19-6-2006 and also given sufficient time. It is further stated that the respondent Corporation and the Government have granted several relaxations to the petitioner in the proposed construction and in the existing building towards all round setbacks and permitted excess FSI to an extent of 1:0.25 and in lieu of the affected portion, the cost of the

land value was adjusted in the penal amount. It is also further stated that the above said relaxations were granted based on the petitioner's own representation dt.29-10-1994 submitted before the Government agreed to surrender the affected portion for 150'-0" wide road to a depth of 30'-0" through out the frontage to MCH at free of cost and therefore the petitioner is not entitled to claim any damages or compensation towards the affected portion. It is also stated that since the petitioner has agreed to surrender the affected portion to respondent Corporation at free of cost to a depth of 30'-0" affected in the proposed 150'-0" Inner Ring Road the MCH and the Government have granted relaxations based on the above condition on several occasions for the proposed construction, deviations made in the all round setbacks, excess built up area to enable to construct 5th floor and also adjusted the cost of the land market value in the penal amount at the time of granting permissions. It is also further stated that the Road Widening and construction of Flyover work has been taken up by the respondent Corporation in the interest of general public, the petitioner is required to handover the physical possession of the affected structures in the proposed road widening for smooth flow of the traffic, to ease the traffic problem, to curb the traffic

jams and to save the valuable human lives from accidents etc. It is also stated that keeping in view of the development work such as construction of Flyover and notified as Corridor Road for construction of MRTS., the widening of the road i.e., bottleneck at the petitioner's affected property has to be handed over to the respondent Corporation.

7. A reply affidavit is filed, again in detail, explaining several of the allegations and also taking a specific stand that in the light of the facts and circumstances which had been well explained in paras 2 to 6 of the reply affidavit, it is prayed that the respondent Corporation may be directed to consider the representation dated 19-6-2006 and pass suitable orders and direct the respondents to maintain *status quo* in the meanwhile.

8. On overall appreciation of the facts and circumstances and in the light of the stands taken by the respective parties, this Court is of the considered opinion that it would be just and proper to direct the 3rd respondent – Chief City Planner, Municipal Corporation of Hyderabad to consider and dispose of the representation of the petitioner dt.19-6-2006 in accordance with law, within a period of four weeks from the date of receipt of this order and in view of the facts and circumstances till

then *status quo* as on today to be maintained.
Accordingly, the Writ Petition is disposed of. no order as
to costs.

Justice P.S.Narayana

15th September, 2006

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